



526991

WES L
GT Co**ZIMMERMAN, KUHN, DARLING, BOYD, TAYLOR AND QUANDT, PLC
LAW OFFICES**

412 SOUTH UNION STREET
P.O. BOX 987
TRAVERSE CITY, MICHIGAN 49685-0987
TELEPHONE 231-941-5000
FACSIMILE 231-941-5154

JOSEPH J. ZIMMERMAN
R. EDWARD KUHN
A. BROOKS DARLING
JAMES W. BOYD
DENNIS K. TAYLOR
JOSEPH E. QUANDT
KENNETH A. ARTZ
JULIE A. HARRISON
STEPHEN J. SCHOENOW
KELLY M. HAGAN

Lansing Office:
3130 Pine Tree Road
Lansing, MI 48911
Telephone 517-394-1180
Facsimile 517-393-1791

RECEIVED**SEP 23 2002**

SURFACE WATER QUALITY DIVISION
CADILLAC DISTRICT OFFICE

CHARLES H. MENMUIR
1903-1987

Of Counsel:
LEWIS G. GATCH
ROBERT J. DEDERICH

September 20, 2002

Mr. Phil Roycraft
Waste Management Division
Michigan Department of Environmental
Quality
Cadillac District Office
120 W. Chapin Street W
Cadillac, MI 49601

Mr. Michael Stifler ✓
Surface Water Quality Division
Michigan Department of Environmental
Quality
Cadillac District Office
120 W. Chapin Street W
Cadillac, MI 49601

RE: Williamsburg Receiving & Storage, Inc.

Dear Messrs. Roycraft and Stifler:

I am in receipt of your September 5, 2002 letter to Williamsburg Receiving & Storage, Inc. I have been asked to respond to the material portions of your correspondence. Please remember to copy my office with your correspondence to Williamsburg Receiving & Storage, Inc. in this matter.

On the first issue, you indicated that the "deadline for submittal" of the work plan was August 26, 2002 and it was not received by MDEQ staff until August 27, 2002. You acknowledge that the work plan was mailed August 26, 2002. In other administrative matters, including consent orders, submittal dates are usually considered mail dates. I am sure if you inspect the postmark, you would note that the report was mailed (submitted) on August 26, 2002 consistent with the Consent Order requirements. Mail date submittals are generally the accepted norm as neither party controls the mail system and we cannot guarantee when MDEQ would receive information prepared by WRS unless WRS has the information hand delivered to MDEQ staff. Since this is not highly practical, submittal dates are usually considered mail dates. In order to eliminate any future confusion, we will try to mail deadline material three days prior to the submittal date. However, we think it is important that you understand that WRS did not unnecessarily delay their response. They merely had a different understanding of what the submittal date should be.

ZIMMERMAN, KUHN, DARLING,
BOYD, TAYLOR AND QUANDT, PLC

Mr. Phil Roycraft
September 20, 2002
Page 2

In any event, I cannot imagine that the Department was prejudiced in its review by receiving the work plan one day later than the date it apparently expected to receive same. Attached to this letter please find an order in a separate MDEQ administrative matter where the Administrative Law Judge clearly delineated that submittal dates were mail dates just so that you understand that I am not the only person who considers submittal dates mail dates. Not insignificantly, the IRS considers timely submittal dates to be postmark dates as well.

On the remaining issues, you indicated that you did not feel that nuisance odors had been eliminated at the facility. You cite call in complaints from individuals apparently residing near the facility who claimed they could smell odors from the WRS facility. Please consider this letter a Freedom of Information Act request to produce all telephone logs or other documentation which the Department has which documents these complaints.

The type of subjective odor evaluation which you note in your letter of September 5 is exactly the type of subjective analysis which we were concerned about during our negotiations related to the Consent Order. Accordingly, the Consent Order specifies that nuisance odors are to be evaluated by Air Quality Division staff, presumably pursuant to Rule 901 of the Michigan Air Pollution Control Act; MAC R 336.1901. Under the Rule 901 standard, a nuisance odor must create injurious effects to human health or safety . . . or, constitute an unreasonable interference with the comfortable enjoyment of life and property. Further, the Consent Order dictates that this evaluation is to be undertaken by Air Quality Division personnel, not nearby residents who have an ulterior agenda. The Consent Order also indicates that MDEQ-AQD staff will attempt to notify WRS when it is conducting an evaluation of nuisance odors. WRS received no such notification. Further, and more troubling, your letter indicates that your concerns over nuisance odors were not based upon evaluation by MDEQ staff at all and instead were based on complaint calls from others. Simply put, an occasional odor from the facility does not a nuisance make. While we concede that strong odors emanated from the facility earlier in the summer, the occasional odors which may now emanate from the facility do not rise to the level of an "unreasonable interference" as required under Rule 901 and under Michigan nuisance law. I would be happy to provide you Michigan Appellate Court decisions which exemplify this fact if you wish.

Notwithstanding the above, WRS agrees to comply with your stated requests and will continue to remove wastewater from the lagoon, add lime to the lagoon, and remove, consistent with Part 115, any sludges or sediments remaining in the lagoon after all water has been pumped from the lagoon.

ZIMMERMAN, KUHN, DARLING,
BOYD, TAYLOR AND QUANDT, PLC

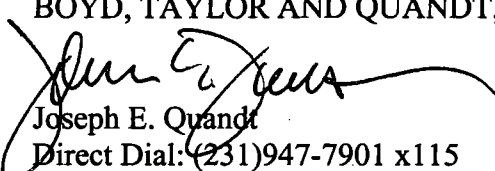
Mr. Phil Roycraft
September 20, 2002
Page 3

It is my sincere hope that you do not perceive the above referenced response as being confrontational. We do not wish to have rancor with the MDEQ or any other party related to WRS operations. However, we cannot simply dismiss the very real concern that there is a focused and concentrated effort by a few key individuals who own or occupy property near the plant who wish to see the plant closed. If they feel that making unwarranted, untrue and unjustified complaint calls to the MDEQ will facilitate that process, they will certainly continue to make complaint calls to the Department. Accordingly, my client's compliance with nuisance odor provisions of the Consent Order should not be evaluated based upon the subjective evaluations of nearby property owners who obviously have an agenda which goes beyond reasonable regulatory oversight at this facility. Accordingly, that is why the Consent Order specifies that nuisance odor conditions are to be evaluated by MDEQ Air Quality staff based on the Rule 901 standard. We hope that future evaluations by the MDEQ will not be based upon unverified complaint calls.

I hope that this has been responsive to your September 5, 2002 letter. Should you have any further questions or comments, please feel free to contact me.

Sincerely,

ZIMMERMAN, KUHN, DARLING,
BOYD, TAYLOR AND QUANDT, PLC



Joseph E. Quandt
Direct Dial: (231)947-7901 x115
jequandt@zimmerman-kuhn.com

JEQ:csg
Enclosure

pc: Mr. Chris Hubbell
Mr. Rick Banwell
Mr. Rick Ruzs
Mr. Frank Ruswick
Ms. Janice Heuer
Ms. Sy Paulik
Mr. Shane Nixon
Edgar R. Roy, III, Esq.
Mr. Andy Smits